

APPEAL NO. 020344
FILED MARCH 25, 2002

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing (CCH) was held on November 16, 2001, and January 7, 2002. The hearing officer resolved the disputed issue by deciding that the respondent (claimant) was not involved in horseplay at the time of his claimed injury on _____. The appellant (self-insured) appealed and the claimant responded.

DECISION

The hearing officer's decision is affirmed.

The claimant was a passenger in a truck that rolled over. Section 406.032(2) provides that an insurance carrier is not liable for compensation if the employee's horseplay was a producing cause of the injury. The self-insured contends that it presented sufficient evidence of horseplay to shift the burden of proof to the claimant to prove that the exception did not apply. See Texas Workers' Compensation Commission Appeal No. 91029, decided October 25, 1991. The self-insured also contends that the hearing officer's decision is against the great weight and preponderance of the evidence. Much conflicting evidence was presented at the CCH on the disputed issue. The hearing officer is the sole judge of the weight and credibility of the evidence. Section 410.165(a). As the finder of fact, the hearing officer resolves the conflicts in the evidence and determines what facts have been established. Regardless of whether the burden of proof shifted, there is sufficient evidence from the claimant's testimony and the truck driver's testimony to support the hearing officer's decision that the claimant was not involved in horseplay at the time of the claimed injury. We conclude that the hearing officer's decision is not so against the great weight and preponderance of the evidence as to be clearly wrong and unjust. Cain v. Bain, 709 S.W.2d 175 (Tex. 1986).

The hearing officer's decision and order are affirmed.

The true corporate name of the insurance carrier is **(a self-insured governmental entity)** and the name and address of its registered agent for service of process is

**MAYOR
(ADDRESS)
(CITY) TEXAS (ZIP CODE).**

Robert W. Potts
Appeals Judge

CONCUR:

Thomas A. Knapp
Appeals Judge

Philip F. O'Neill
Appeals Judge